

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RUBEN SANDOVAL-COTA,

Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 09-CV-0820 W  
07-CR-3219 W

**ORDER DENYING PETITION  
FOR WRIT OF HABEAS  
CORPUS [DOC. 24]**

On April 20, 2009, Petitioner Ruben Sandoval-Cota, a federal prisoner proceeding *pro se*, commenced this habeas corpus proceeding pursuant to 28 U.S.C. § 2255. Respondent United States of America opposes. The Court decides the matter on the papers submitted and without oral argument. See Civil Local Rule 7.1 (d.1). For the reasons stated below, the Court **DENIES** the petition.

**I. BACKGROUND**

Petitioner was arrested on or about October 30, 2007 and a complaint was filed on November 1, 2007. The complaint charged Petitioner with violation of 21 U.S.C. § 841(a)(1) (possession with intent to distribute). (*Compl.* [Doc. 1], 1:17-19.)

On March 3, 2008, Petitioner pled guilty to one count of knowingly and intentionally possessing, with intent to distribute, 100 kilograms and more, to wit:

1 approximately 421.80 kilograms (929.90 pounds) of marijuana, a Schedule I Controlled  
 2 Substance, in violation of 21 U.S.C. § 841(a)(1). (*Plea Agree.* [Doc. 17], 2:1-7.) In the  
 3 plea agreement, the parties agreed that the Sentencing Guidelines should be computed  
 4 to result in an adjusted offense level of 19. (*Id.*, 5:25-6:3.) The parties also agreed that  
 5 the Petitioner would not request additional downward adjustments and that the  
 6 Government would oppose any downward adjustment not set forth in the Sentencing  
 7 Guideline Calculations. (*Id.*, 6:19-21.) The parties further agreed that the Government  
 8 would oppose any requests by the Petitioner for additional downward departures not set  
 9 forth in the Sentencing Guideline Calculations (*Id.*, 7:1-6), and that Petitioner should  
 10 receive a mandatory minimum of 5 years in prison (if the Petitioner did not qualify for  
 11 safety valve relief pursuant to USSG §§ 2D1.1(b)(6) and 5C1.2) (*Id.*, 3:5).

12 On August 19, 2008, Petitioner's sentencing hearing was held and Petitioner was  
 13 sentenced in accordance with the Plea Agreement. This Court sentenced Petitioner to  
 14 30 months imprisonment followed by 4 years of supervised release. (*Judgment* [Doc. 23],  
 15 2-3.)

16 On April 20, 2009, Petitioner commenced the present section 2255 proceedings.  
 17 Respondent filed an opposition. To date, Petitioner has not filed a response.  
 18

19 **II. DISCUSSION**

20 Petitioner requests a reduction in his sentence because his status as a deportable  
 21 alien renders him ineligible for housing in a minimum security facility or community  
 22 correctional facility. Respondent contends that in addition to the fact that Petitioner's  
 23 habeas request lacks merit, Petitioner entered into a Plea Agreement and waived his  
 24 right to challenge his sentence. The Court agrees.

25 Petitioner waived his right to collaterally attack his sentence in the Plea  
 26 Agreement. Courts have repeatedly upheld the validity of appeal waivers finding that  
 27 "public policy strongly supports plea agreements." United States v. Navarro-Botello,  
 28 912 F.2d 318, 321 (9th Cir. 1990); see also Brady v. United States, 397 U.S. 742, 752

1 n. 10 (1970); United States v. Wiggins, 905 F.2d 51, 53 (4th Cir. 1990). Courts will  
 2 enforce a Petitioner's appeal waiver if (1) the waiver is knowingly and voluntarily made;  
 3 and (2) the waiver, by its terms, waives the right to appeal. United States v. Nunez, 223  
 4 F.3d 956, 958 (9th Cir. 2000).

5 First, a valid waiver requires that the Petitioner agreed to its terms knowingly and  
 6 voluntarily. See id. A reviewing court looks to the circumstances that surround the  
 7 Plea Agreement's signing and entry to determine whether a defendant agreed to its  
 8 terms knowingly and voluntarily. See United States v. Baramdyka, 95 F.3d 840, 843  
 9 (9th Cir. 2000).

10 In the present case, Petitioner entered into the Plea Agreement with his  
 11 attorney's advice and consent. (*Plea Agree.*, 4:8-9.) Petitioner represented that his plea  
 12 was knowing and voluntary. (*Id.*, 4:5-14, 9:5-8.) Thus, the Court concludes that  
 13 Petitioner knowingly and voluntarily agreed to waive his right to appeal or collaterally  
 14 attack his sentence.

15 Second, a valid waiver must also explicitly state that Petitioner is waiving his right  
 16 to appeal. See Nunez, 223 F.3d at 958. A reviewing court applies contract principles,  
 17 including the parole evidence rule. See United States v. Ajugwo, 82 F.3d 925, 928 (9th  
 18 Cir. 1996). Under the parole evidence rule, a court enforces the contract's plain  
 19 language and does not look to "extrinsic evidence. . . to interpret. . . the terms of an  
 20 unambiguous written instrument." Wilson v. Arlington Co. v. Prudential Ins. Co. Of  
 21 Am., 912 F.2d 366, 370 (9th Cir. 1990).

22 Here, the Plea Agreement explicitly states, in relevant part:

23 In exchange for the Government's concessions in this plea agreement,  
 24 defendant waives, to the full extent of the law, any right to appeal or to  
 25 collaterally attack the conviction and sentence, including any restitution  
 26 order, unless the court imposes a custodial sentence greater than the  
 27 higher of the guideline range recommended by the Government pursuant  
 28 to this plea agreement at the time of sentencing or statutory mandatory  
 minimum term, if applicable. If the custodial sentence is greater than the  
 high end of that range, the defendant may appeal, but the Government  
 will be free to support on appeal the sentence actually imposed. If the

1 defendant believes the Government's recommendation is not in accord  
2 with this agreement, defendant will object at the time of sentencing;  
otherwise the objection will be deemed waived.  
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4 (Plea Agree., 8:3-11.) Thus, Petitioner agreed to waive collateral attack so long as the  
5 Court did not impose a sentence longer than the high end of the offense level  
6 recommended by the Government. Because Petitioner's sentence of 30 months  
7 imprisonment followed by 4 years of supervised release did not exceed the high end of  
8 the recommended offense level, the terms of his Plea Agreement bar this collateral  
9 attack. The Court is, therefore, prevented from granting the habeas relief requested  
10 herein.

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12 **III. CONCLUSION AND ORDER**

13 In light of the foregoing, the Court **DENIES** Petitioner's petition for writ of  
14 habeas corpus. [Doc. 24.] The Clerk of the Court shall close the district court file.  
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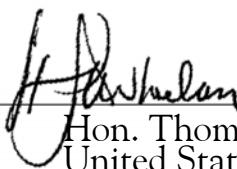
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17 **IT IS SO ORDERED.**

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19 DATED: January 13, 2011

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Hon. Thomas J. Whelan  
United States District Judge

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